

1 R. Scott Taylor, OSB No. 74324  
2 400 E 2<sup>nd</sup> Ave., Suite 103  
3 Eugene, OR 97401  
4 Tel (541) 485-1511  
5 Fax (541) 246-2424  
6 Scott@taylortapper.com

7 Clinton L. Tapper, OSB No. 084883  
8 400 E 2<sup>nd</sup> Ave., Suite 103  
9 Eugene, OR 97401  
10 Tel (541) 485-1511  
11 Fax (541) 246-2424  
12 Clinton@taylortapper.com

13  
14 UNITED STATES DISTRICT COURT

15 DISTRICT OF OREGON

16 MEDFORD DIVISION

17  
18 MICHAEL WALTER SMITH and WALTER ) CASE NO.: 1:13-cv-1201  
19 W. SMITH, )  
20 Plaintiffs, ) COMPLAINT  
21 vs. )  
22 MUTUAL of ENUMCLAW INSURANCE )  
23 COMPANY, )  
24 Defendant. )

25 Michael Walter Smith and Walter W. Smith, Plaintiffs, allege that, at all time's material hereto, as  
26 follows:

27  
28 1. Plaintiffs both live in Josephine County Oregon and are domiciled in Oregon.

2. Defendant is an insurance corporation authorized to issue insurance and conduct business in the State of Oregon, but is foreign carrier with its principal place of business headquartered in another state.

## JURISDICTION

3. This Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. sections 1332 and 2201. The amount in controversy exceeds \$75,000 exclusive of costs and interest.

## VENUE

4. Venue in this District is proper under 28 U.S.C. section 1391 and L.R. 3.4. in the Medford Division of Oregon. The fire loss occurred in Grants Pass, Josephine County Oregon and the most convenient location for trial of this matter is in Medford Oregon.

## FIRST CLAIM FOR RELIEF

5. Plaintiffs' were the beneficial owners of certain real property located in Josephine County, Oregon, and commonly referred to as 958 W. Park Street, Grants Pass Oregon, hereafter the "premises". Located on this premise was a single family residence occupied entirely by plaintiff, Michael Walter Smith, and his father, Charles A. Smith.

6. Plaintiffs and Charles Smith owned personal property kept on the premises.

7. Plaintiffs had purchased an insurance Home Owners Policy Numbered HO71275240, from defendant, hereafter the Policy, which was in effect at all times material hereto, naming the plaintiffs as the insured and 958 W. Park Street, Grants Pass Oregon as the residence premises.

8. On or about July 18 2012 to July 20 2012, while plaintiffs and Charles A. Smith were away from the residence, a burglary occurred that stole personal property owned by plaintiffs and Charles A. Smith. This personal property was not recovered.

9. Under the terms, conditions, limitations and exceptions contained in the policy, the policy provided replacement cost insurance coverage for personal property owned or used by plaintiffs while it is anywhere in the world, and at the request of plaintiffs, defendant will cover personal property owned by others while the property is on the part of the resident premises occupied by plaintiff. Plaintiffs have requested that defendant cover personal property owned by Charles A. Smith.

10. Subject to the terms, limitations and conditions of the policy, losses to personal property due to perils such as theft are a covered loss.

11. Plaintiffs notified the police and defendant promptly upon learning of the theft of the personal from the premises.

12. Plaintiffs have submitted a claim for the loss of personal property caused by this theft in an amount that exceeds the limits of the Policy for this type of loss. The value of the personal property stolen exceeds \$106,610.

13. Plaintiffs have done everything on their part under the policy to be performed.

14. Although defendant has \$500 for the stolen personal property, defendant has failed, refused, delayed and neglected to pay this claim in full. This constitutes a breach of the Policy and there is due and owing \$106,110.

15. Plaintiffs are entitled to recover prejudgment interest at the legal rate of 9% per annum that has accrued on each past due benefit under the policy from July 20, 2012 until paid.

1       16. Plaintiffs have been required to retain the services of an attorney in this matter and should be  
2               awarded their reasonable attorney fees incurred herein pursuant to ORS 742.061.  
3  
4  
5

6               WHEREFORE, Plaintiffs pray that they recover as alleged above and for their costs and  
7               disbursements incurred herein.  
8

9               R. SCOTT TAYLOR  
10              \_\_\_\_\_  
11              /s/ R. Scott Taylor  
12              R. Scott Taylor, Of Attorneys for Plaintiffs  
13              OSB No. 74324  
14              Taylor & Tapper, Attorneys  
15              Attorneys for Plaintiff  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4 - COMPLAINT

Taylor & Tapper  
400 E 2nd Ave., Suite 103  
Eugene, OR 97401  
Ph: (541) 485 - 1511 / Fx: (541) 246-2424  
Scott@taylortapper.com